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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re L.M. et al., Persons Coming Under the Juvenile Court Law.	B292749
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.C., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 18LJJP00282A)

APPEAL from orders of the Superior Court of Los Angeles County. Steven E. Ipson, Juvenile Court Referee. Affirmed.

Keiter Appellate Law, Mitchell Keiter under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court asserted jurisdiction over L.M. after finding his mother (Mother) has a history of substance abuse and untreated mental health issues that render her incapable of providing him adequate care and supervision. It further found L.M.'s father, B.C. (Father), has an extensive criminal history and failed to adequately care for and supervise L.M. while incarcerated. The court removed L.M. from his parents' custody and ordered Father comply with a case plan. On appeal, Father contends there is insufficient evidence to support the jurisdictional findings, removal order, and case plan. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Referral and Investigation

In April 2018, the Los Angeles Department of Children and Family Services (DCFS) received a report that L.M.'s half-brother tested positive for amphetamines and marijuana at birth. During the ensuing investigation, Mother admitted she had been using methamphetamine and marijuana regularly since at least 2009, including during her pregnancy. Mother also reported she was diagnosed with bipolar disorder as a teenager and was previously hospitalized for psychiatric reasons. She denied taking any medication or participating in treatment to address her mental health issues. Instead, Mother said she self-medicates using methamphetamine and marijuana.

Mother indicated that L.M., who was nine years old, lived with his maternal grandmother, with whom she also planned to live once released from the hospital. Maternal grandmother confirmed that L.M. had lived with her for the past three years and she "assists [M]other with caring" for him. Maternal grandmother denied that Mother also lives in the home, but said she visits L.M. occasionally. Maternal grandmother suspected

Mother may have substance abuse issues, but she did not believe Mother was ever under the influence of drugs while visiting L.M. In any event, maternal grandmother said she does not allow Mother to be alone with L.M. DCFS obtained L.M.'s most recent report card, which indicated he received C's and D's in his classes.

L.M. was the subject of a prior DCFS referral in 2014. Around that time, he was living with Mother and Dwight C., who is the father of L.M.'s half-brother. Dwight reportedly kicked Mother out of the house because she was using drugs, associating with gang members, and carrying weapons. Mother then arranged for L.M.'s maternal great grandmother to secretly remove L.M. and his half-brother from Dwight's home. Dwight also reported that Mother suffers from mental illness and threatened to kill her children. DCFS ultimately closed the referral as inconclusive for neglect and unfounded for emotional abuse.

A background check revealed that Father is incarcerated and has an extensive criminal history. In 2010, he was convicted of receiving stolen property (Pen. Code, § 496, subd. (a)) and sentenced to probation for three years. Later that year, he was convicted of unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)), for which he was sentenced to 16 months in prison. In 2011, Father was convicted of inflicting corporal injury upon a spouse/cohabitant (Pen. Code, § 273.5, subd. (a)) and sentenced to two years in prison. In March 2013, he was convicted of misdemeanor battery upon a spouse/cohabitant (Pen. Code, § 243, subd. (e)(1)), and received a sentence of three years probation. A few months later, he was charged with inflicting corporal injury upon a spouse/cohabitant (Pen. Code, § 273.5, subd. (a)),

false imprisonment (Pen. Code, § 236), making a terroristic criminal threat (Pen. Code, § 422, subd. (a)), assault with a deadly weapon with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)), and kidnapping (Pen. Code, § 207, subd. (a)). As part of a plea deal, Father pleaded no contest to kidnapping, and the remaining counts were dismissed. Father was sentenced to six years in prison, and he is expected to be released in July 2019.

The juvenile court removed L.M. from Mother's custody, and he was placed with his maternal great grandmother.[1] Mother visited L.M. twice after he was removed. During one of those visits, maternal great grandmother ended the visit because she suspected Mother was under the influence of drugs.

Maternal great grandmother reported that L.M. has been severely impacted by Mother's absence and is in need of therapeutic services. She also reported that Father and L.M. have regular telephone contact and L.M. expressed a desire to live with Father upon his release from prison.

Petition

In May 2018, DCFS filed a petition asserting L.M. is a person described by Welfare and Institutions Code section 300, subdivision (b).[2] The petition alleged that Mother has a nine-year history of substance abuse and is a current abuser of methamphetamine, amphetamine, and marijuana, which render her incapable of providing L.M. regular care and supervision.

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[1] L.M. could not be placed with maternal grandmother because maternal grandfather, who also lived in the home, has an extensive criminal history that required further investigation.

[2] All undesignated statutory citations are to the Welfare and Institutions Code.

It further alleged Mother suffers from untreated mental and emotional problems, including bipolar disorder, which also render her unable to provide L.M. regular care and supervision.

On July 9, 2018, DCFS filed a first amended petition, which added a single count under section 300, subdivision (b), alleging Father has a history of arrests and convictions including for infliction of corporal injury upon a spouse/cohabitant and kidnapping. It further alleged Father is unable to provide L.M. with ongoing parental care and supervision due to his incarceration, which places the child at risk of harm.

Jurisdiction Hearing

The court held a jurisdiction hearing on August 21, 2018. Father appeared at the hearing, but Mother did not. With respect to the allegations concerning Father, DCFS asserted jurisdiction was proper because L.M. went without care as a result of Father's actions that led to his incarceration. Father argued there was no nexus between his incarceration and any failure to protect or supervise L.M., nor any showing that he could not provide adequate care for the child upon his release. He further argued his convictions had no bearing on his ability to provide parental care.

The court sustained the petition as alleged. As to the count related to Father, the court explained that his convictions were for serious crimes and he made no plan to provide for L.M. during his incarceration.

Disposition Hearing

The court held the disposition hearing on September 17, 2018. Once again, Father appeared but Mother did not. DCFS recommended that Father participate in family reunification services, including random drug testing and individual

counseling to address domestic violence and other case issues. Father responded that such services are not available in prison and asked the court to allow him to instead participate in any available domestic violence or group counseling program.

The court declared L.M. a dependent, removed him from his parents' custody, and ordered DCFS provide Mother and Father reunification services. Per Father's request, the court did not require that he drug test and indicated he may substitute other forms of therapy and counseling that are available in prison.

On September 18, 2018, Father filed a timely notice of appeal indicating he intended to challenge the court's jurisdictional findings made at the August 21, 2018 hearing.

DISCUSSION

I. Substantial Evidences Supports the Jurisdictional Findings Related to Mother's Conduct

Father contends there is insufficient evidence showing Mother's substance abuse and mental health issues pose a risk of serious physical harm to L.M.[3] We disagree.

When a parent challenges a juvenile court's jurisdictional findings on appeal, the reviewing court applies the substantial evidence test standard of review. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Under this standard of review, the appellate court must examine the record in a light most favorable to the juvenile court's findings, accepting its assessments of the credibility of the witnesses. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) The juvenile court's findings must be upheld when there is any substantial evidence that supports the

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[3] DCFS does not contest Father's standing to challenge the jurisdictional findings premised on Mother's conduct.

findings, resolving all conflicts in support of the findings and indulging all reasonable inferences in favor of the findings. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

Under section 300, subdivision (b)(1), the juvenile court may exercise jurisdiction over a child when the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness" as a result of the failure of his or her parent to "adequately supervise or protect the child" or by the failure of the parent to "provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse."

Father does not contest the juvenile court's findings that Mother's substance abuse and mental health issues render her unable to supervise and provide regular care for L.M. Nor could he. The evidence shows that Mother previously threatened to kill L.M., presumably as a result of her bipolar disorder. Rather than seeking treatment, Mother self-medicated by abusing methamphetamine and marijuana. She then displayed a total disregard for how her substance abuse affects her children, as evidenced by the fact that she continued to use methamphetamine and marijuana while pregnant and appeared at a monitored visit while under the influence of drugs. Mother also failed to provide regular care for L.M. for at least three years, visited him only twice while he was detained, and declined to appear at several juvenile court hearings, which further demonstrates an indifference to the child's wellbeing. As Father apparently concedes, Mother is clearly unable or unwilling to adequately supervise and provide regular care for L.M.

Nonetheless, Father briefly contends the juvenile court erred in finding Mother's substance abuse and mental health issues resulted in a substantial risk of physical harm to L.M. In support, he points to evidence that Mother had minimal contact with L.M., L.M.'s relatives protected him from Mother, and L.M. was receiving adequate care from maternal grandmother. We are not persuaded.

Although Mother had infrequent contact with L.M. in the recent past, she indicated an intention to live with him and maternal grandmother upon her release from the hospital. Living in the same home with Mother would undoubtedly pose a substantial risk of serious physical harm to L.M. Indeed, as discussed above, Mother previously threatened to kill L.M., and more recently appeared at a monitored visit while under the influence of drugs. Until Mother receives treatment for her mental illness and addresses her substance abuse issues, it is reasonable to expect that such harmful conduct will recur.

It is not enough, as Father contends, that maternal grandmother indicated she would not allow Mother to be alone with L.M. *Rosa S. v. Superior Court* (2002) 100 Cal.App.4th 1181, is instructive. In that case, the juvenile court exercised jurisdiction under section 300, subdivision (b), over a child whose mother had a drug problem, neglected the child, and ultimately left the child with the grandparents. (*Rosa S., supra*, at p. 1184.) The mother argued that, because the child was " 'living under the watchful eyes of her grandparents,' " there was no risk she would suffer substantial harm from the mother's neglectful conduct. (*Id*. at p. 1185.) The Court of Appeal rejected the argument, explaining there was a risk to the child because, without the intervention of the juvenile court, the grandparents had no power

to prevent the mother from taking the child from the home and exposing her to a harmful lifestyle. (*Ibid.*)

The same is true here. Despite ceding most of her caregiver responsibilities to maternal grandmother, Mother retained lawful custody of L.M. As a result, absent the juvenile court's intervention, maternal grandmother had no lawful means to preclude Mother from having unsupervised contact with L.M. Nor could she lawfully prevent Mother from removing L.M. from the home, as Mother previously did when Dwight C. attempted to restrict her access to the child.

Contrary to Father's suggestion, the fact that maternal great grandmother successfully terminated one of Mother's visits does not demonstrate that L.M.'s relatives can successfully protect him. At the time that occurred, the juvenile court had already removed L.M. from Mother's custody and restricted her access to the child. Absent the juvenile court's intervention, maternal great grandmother would have been legally powerless to end the visit.

We also disagree with Father's contention that L.M. was receiving adequate care from maternal grandmother. The evidence indicates that L.M. was struggling emotionally and educationally under her care. Maternal great grandmother noted that L.M. had been severely impacted by Mother's absence, and his report card showed he was on the cusp of failing multiple subjects. Yet, there is no evidence that maternal grandmother ever attempted to obtain services for L.M. to address these concerns. In fact, because Mother retained legal custody of L.M., it is doubtful maternal grandmother even had the authority to do

so.[4] (See Fam. Code, §§ 3003, 3006 [legal custody gives a parent the right to make decisions related to a child's health, education, and welfare]; *In re Athena P.* (2002) 103 Cal.App.4th 617, 629–630 [grandparents without legal custody of a child lacked authority to enroll her in school and consent to medical treatment].)

Mother's arraignment with maternal grandmother for L.M.'s care was clearly insufficient to address his basic needs. Although it had yet to result in physical harm to the child, " '[t]he court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) So long as Mother retained lawful custody of L.M., her substance abuse, untreated mental health issues, and general indifference to L.M.'s wellbeing posed an ongoing substantial risk of harm to the child.

Father's reliance on *In re Anthony G.* (2011) 194 Cal.App.4th 1060, is misplaced. In that case, the child was living with his mother and grandmother, and the father failed to contribute to his support. Based on the father's conduct, the juvenile court sustained a petition under section 300, subdivision (g), which permits jurisdiction over a child who is left "without any provision for support." The Court of Appeal reversed, explaining that the child was not left without any provision for

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[4] We are aware that certain relative caregivers may make decisions regarding a minor's health and education by completing a caregiver authorization affidavit. (See Fam. Code, § 6550.) There is no evidence in the record, however, that maternal grandmother completed such an affidavit or that Mother would have consented to it. Moreover, a relative's authority under such an affidavit is superseded by any contravening decision of the parent. (Fam. Code, § 6550, subd. (b).)

support given he received support from his mother and grandmother. (*In re Anthony G., supra*, at p. 1065.)

Here, the juvenile court exercised jurisdiction under section 300, subdivision (b), rather than section 300, subdivision (g). Section 300, subdivision (b), does not require a showing that a child has been left without any provision for support; nor did the petition allege as much. Instead, DCFS needed only show a substantial risk of serious physical harm "as a result of the failure or inability of [the child's] parent . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness . . . or substance abuse." (§ 300, subd. (b)(1).) For the reasons discussed above, there is sufficient evidence to support such findings.

II. We Need Not Consider Father's Challenge to the Jurisdictional Findings Related to His Conduct

Father additionally contends the juvenile court erred in sustaining the jurisdictional allegations related to his conduct. We need not address Father's contentions, given there is substantial evidence supporting the jurisdictional findings related to Mother's conduct.

It is well established that when there are multiple grounds for the assertion that a child comes within the jurisdiction of the dependency court, the reviewing court may affirm the finding of jurisdiction if any one of the statutory bases for jurisdiction is supported by substantial evidence. In such cases, the reviewing court need not consider other challenged jurisdictional findings. (*In re I.J., supra,* 56 Cal.4th at pp. 773–774; *In re J.C.* (2014) 233 Cal.App.4th 1, 3–4; *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Despite this

general rule, we may "exercise our discretion and reach the merits of a challenge to many jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763; accord *In re A.R.* (2014) 228 Cal.App.4th 1146, 1150.)

Father urges us to exercise such discretion here because the court's jurisdictional findings regarding his conduct ultimately led to the removal order and case plan, which in turn may affect his ability to reunify with L.M. However, as we discuss in the next section, Father did not appeal the removal order and case plan. Therefore, no matter the outcome of Father's challenge to the jurisdictional findings, the court will retain jurisdiction over L.M. and the dispositional orders will stand. We decline to exercise our discretion under such circumstances. (See *In re A.R., supra*, 228 Cal.App.4th at p. 1151.)

III. We Lack Jurisdiction to Consider Father's Challenges to the Removal Order and Case Plan

Father contends the juvenile court erred in removing L.M. from his custody and ordering he comply with a case plan. DCFS urges us to disregard Father's arguments because he did not identify the juvenile court's dispositional orders in his notice of appeal. We agree with DCFS that we lack jurisdiction to consider Father's arguments.[5]

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[5] Father did not respond to DCFS's argument and apparently concedes the issue.

Our jurisdiction is limited in scope to the notice of appeal and the judgment or order from which the appeal is taken. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846.) " 'It is elementary that an appeal from a portion of a judgment brings up for review only that portion designated in the notice of appeal.' " (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 625.) Although we must liberally construe notices of appeal, (Cal. Rules of Court, rule 8.100(a)(2)), the "rule favoring appealability in cases of ambiguity cannot apply where there is a clear intention to appeal from only part of the judgment or one of two separate appealable judgments or orders." (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47.)

Father's notice of appeal evidences a clear intention to appeal only the jurisdictional findings that served as a basis for the declaration of dependency. Father wrote on the notice of appeal that he is appealing the juvenile court's August 21, 2018 order "sustaining . . . b-4 allegation."[6] He did not identify any of the orders made at the September 17, 2018 disposition hearing. Consistent with the limited scope of his appeal, on the second page of the notice, Father checked the boxes indicating the order appealed from was made under section 360 (declaration of dependency), with review of the section 300 jurisdictional findings. He did not check the boxes for "removal of custody from parent" and "other orders." Father then listed several hearing dates, including the date of the jurisdiction hearing; he did not list the date of the disposition hearing. From this, it is clear Father intended only to challenge the juvenile court's

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[6] The allegations in the amended petition related to Father's conduct were designated "b-4."

jurisdictional findings and resulting declaration of dependency. There is nothing in the notice of appeal to suggest he intended to appeal the removal order and case plan, no matter how liberally we construe it.

That Father did not intend to challenge the removal order and case plan is consistent with his conduct at the disposition hearing and the scope of the court's orders. At no point did Father object to DCFS's recommendation that L.M. be removed from his custody. Instead, he objected only to portions of the proposed case plan requiring he participate in drug testing and individual therapy. In response to Father's objections, the trial court eliminated the drug testing requirement and permitted Father to participate in alternative forms of therapy or counseling, as he specifically requested. It is reasonable, therefore, that Father would choose not to appeal the removal order and case plan.

DISPOSITION

The jurisdictional findings are affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.